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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 GABANA GULF DISTRIBUTION,

No. C 06-02584 CRB

12 Plaintiff,

ORDER

13 v.

14 GAP INTERNATIONAL SALES INC.,

15 Defendant.
16 _____/

17 This order summarizes the Court's rulings on the various motions scheduled to be
18 heard on November 30, 2007. An order providing a more detailed explanation of the Court's
19 analysis will follow at a later date. The parties shall appear on November 30, 2007 at
20 10:00am for a status conference, but no argument on the motions decided in this order will be
21 entertained.

22 A. Gap's Motion for Summary Judgment

23 *Breach of Contract:* Gap's motion for summary judgment on Gabana's claim for
24 breach of contract is GRANTED. The contract expressly permitted Gap to terminate the
25 contract without cause. Although a "franchise" can only be terminated for cause pursuant to
26 the California Franchise Relations Act, that protection does not apply. No reasonable juror
27 could conclude that the contract constituted a franchise because Gabana's operation was not
28 substantially associated with Gap's commercial symbol. Moreover, there is no evidence that

1 Gap sold goods to Al Turki before August 10, 2005. Finally, Gap was expressly authorized
2 by the ISP Agreement to reject Gabana's proposals for retailers.

3 *Breach of the Covenant of Good Faith & Fair Dealing:* Gap's motion for summary
4 judgment on Gabana's claim for breach of the covenant of good faith and fair dealing is
5 DENIED. There is a triable issue whether the parties contemplated that Gap could reject
6 Gabana's proposals for business reasons other than the merits of the proposal.

7 *Fraud:* Gap's motion for summary judgment on Gabana's claim for fraud is
8 GRANTED. There is no evidence that a Gap official made a false promise that was
9 knowingly false when made.

10 *California Business & Professions Code § 17200:* Gap's motion for summary
11 judgment on Gabana's claim under § 17200 is DENIED. A claim under § 17200 may be
12 predicated on a breach of the covenant of good faith and fair dealing.

13 B. Gabana's Motion for Summary Adjudication

14 Because no reasonable juror could conclude that Gabana's operation was substantially
15 associated with Gap's commercial symbol, Gabana's motion for summary adjudication is
16 DENIED.

17 C. Gabana's Motion for Summary Judgment on Gap's Counterclaims

18 *Breach of Contract:* Gabana's motion for summary judgment on Gap's counterclaim
19 for breach of contract is DENIED. There are triable issues that must be decided by the jury,
20 including whether Gabana breached the contract and whether Gap suffered damages thereby.

21 *Breach of the Covenant of Good Faith & Fair Dealing:* Because Gap has merely
22 alleged that the covenant of good faith and fair dealing was breached when the express terms
23 of the ISP Agreement were breached, the covenant claim is superfluous. Accordingly, the
24 claim for breach of the covenant of good faith and fair dealing is DISMISSED without
25 prejudice.

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D. Gabana's Motion to Strike

The Court arrived at its conclusions without the benefit of the expert report of Michael Seid. Accordingly, Gabana's motion to strike the Seid report is DENIED as moot.

IT IS SO ORDERED.

Dated: November 19, 2007



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE